

JUDGMENT OF THE COURT (Sixth Chamber)  
15 January 2004 \*

In Case C-230/01,

REFERENCE to the Court under Article 234 EC by the Court of Appeal (England and Wales) (Civil Division) for a preliminary ruling in the proceedings pending before that court between

**The Intervention Board for Agricultural Produce**

and

**Penycoed Farming Partnership,**

on the interpretation of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1) and Commission Regulation (EEC) No 536/93 of 9 March

\* Language of the case: English.

1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12),

THE COURT (Sixth Chamber),

composed of: V. Skouris, acting for the President of the Sixth Chamber, J.-P. Puissochet, R. Schintgen, F. Macken and N. Colneric (Rapporteur), Judges,

Advocate General: L.A. Geelhoed,  
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

- the United Kingdom Government, by G. Amodeo, acting as Agent, and R. Thompson, barrister,
  
- the Greek Government, by I. Chalkias and C. Tsiavou, acting as Agents,
  
- the Italian Government, by I.M. Braguglia, acting as Agent, assisted by G. Aiello, avvocato dello Stato,

— the Commission of the European Communities, by M. Niejahr and K. Fitch, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Intervention Board for Agricultural Produce and the United Kingdom Government, represented by R. Thompson, of Penycoed Farming Partnership, represented by P. Stanley, Barrister, of the Greek Government, represented by I. Chalkias, and of the Commission, represented by M. Niejahr and K. Fitch, at the hearing on 28 November 2002,

after hearing the Opinion of the Advocate General at the sitting on 13 February 2003,

gives the following

### Judgment

- 1 By order of 31 May 2001, received at the Court on 12 June 2001, the Court of Appeal (England and Wales) (Civil Division) referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1) and Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12).

- 2 Those questions were raised in proceedings between Penycoed Farming Partnership ('Penycoed') and the Intervention Board for Agricultural Produce ('the Board'), which is responsible for administering the milk quota system in the United Kingdom, concerning direct recovery from Penycoed, as milk producer, of the amount of the additional levy on the milk due for the 2.11 million litres of milk which that producer had delivered in excess of its quota during the 1997/98 marketing year.

## Legal background

### *Community legislation*

- 3 Regulation No 3950/92 extended for seven new consecutive 12-month periods from 1 April 1993 the additional levy scheme for milk introduced by Council Regulation (EEC) No 856/84 of 31 March 1984 amending Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products (OJ 1984 L 90, p. 10).
- 4 According to the sixth recital in the preamble to Regulation No 3950/92, the effect of an overrun of the Member States' guaranteed overall quantities is that the producers who contributed to the overrun must pay the levy.
- 5 The eighth recital in the preamble to that regulation states that 'in order to avoid, as in the past, long delays between collection and payment of the levy, which are incompatible with the scheme's objective, provision should be made for the purchaser, who seems in the best position to carry out the necessary operations, to be liable for the levy, and for him to be given the means to collect the levy from the producers who owe it'.

6 Article 1 of Regulation No 3950/92 provides:

‘For seven new consecutive periods of 12 months commencing on 1 April 1993, an additional levy shall be payable by producers of cow’s milk on quantities of milk or milk equivalent delivered to a purchaser or sold directly for consumption during the 12-month period in question in excess of a quantity to be determined.

The levy shall be 115% of the target price for milk.’

7 Article 2(1) to (3) of Regulation No 3950/92 provide:

‘1. The levy shall be payable on all quantities of milk or milk equivalent marketed during the 12-month period in question in excess of the relevant quantity referred to in Article 3. It shall be shared between the producers who contributed to the overrun.

In accordance with a decision of the Member State, the contribution of producers towards the levy payable shall be established, after the unused reference quantities have been reallocated or not, either at the level of the purchaser, in the light of the overrun remaining after unused reference quantities have been allocated in proportion to the reference quantities of each producer, or at national level, in the light of the overrun in the reference quantity of each individual producer.

2. As regards deliveries, before a date and in accordance with detailed rules to be laid down, the purchaser liable for the levy shall pay to the competent body of the Member State the amount payable, which he shall deduct from the price of milk paid to producers who owe the levy or, failing this, collect by any appropriate means.

...

Where quantities delivered by a producer exceed his reference quantity, the purchaser shall be authorised, by way of an advance on the levy payable, in accordance with detailed rules laid down by the Member State, to deduct an amount from the price of the milk in respect of any delivery by that producer in excess of his reference quantity.

3. As regards direct sales, the producer shall pay the levy payable to the competent body of the Member State before a date and in accordance with rules to be laid down.'

8 Article 9 of Regulation No 3950/92 provides:

'For the purposes of this Regulation:

...

(e) “purchaser” means an undertaking or grouping which purchases milk or other milk products from a producer:

— to treat or process them,

— to sell them to one or more undertakings treating or processing milk or other milk products.

However, any group of purchasers in the same geographical area which carries out administrative and accounting operations necessary for the payment of the levy on behalf of its members shall be regarded as a purchaser....’

9 The detailed rules for applying the levy were laid down by Regulation No 536/93.

10 According to the fifth recital in the preamble to Regulation No 536/93, ‘experience gained has shown that major delays in both the transmission of figures on collections or direct sales and payment of the levy have prevented the arrangements from being fully effective;... therefore, lessons should be learned from the past and the necessary conclusions drawn by laying down strict requirements as regards notification and payment deadlines and providing for penalties where deadlines are not met’.

- 11 The seventh recital in the preamble to that regulation states that ‘under Regulation (EEC) No 3950/92 purchasers bear chief responsibility for the correct implementation of the arrangements;... it is therefore essential that Member States approve the purchasers operating in their territory’.
- 12 Article 3(1), (2) and (4) of Regulation No 536/93 provide:

‘1. At the end of each of the periods referred to in Article 1 of Regulation (EEC) No 3950/92, the purchaser shall establish a statement for each producer showing, opposite the producer’s reference quantity and the representative fat content of his production, the quantity and fat content of the milk and/or milk equivalent which he has delivered during the period.

...

2. Before 15 May each year, the purchasers shall forward to the competent authority of the Member State a summary of the statements drawn up for each producer or, where appropriate, by decision of the Member State, the total quantity, the quantity corrected in accordance with Article 2(2) and average fat content of the milk and/or milk equivalent delivered to it by producers and the sum of the individual reference quantities and the average representative fat content of such producers’ production.

...

4. Before 1 September each year, the purchaser liable for levies shall pay the competent body the amount due in accordance with rules laid down by the Member State.’

13 As regards direct sales, Article 4(2) and (4) of Regulation No 536/93 provide:

‘2. Before 15 May each year, the producer shall forward declarations to the competent authority of the Member State.

...

4. Before 1 September each year, the producer shall pay the amount due to the competent body in accordance with rules laid down by the Member State.’

14 Article 5(2) of Regulation No 536/93 provides:

‘Member States shall take any additional measures necessary to ensure payment of levies due to the Community within the time-limit laid down.

Where the set of documents referred to in Article 3(5) of Commission Regulation (EEC) No 2776/88..., which the Member States must transmit to the Commission each month, shows that this time-limit has not been met, the Commission shall reduce advances on entry in the accounts of agricultural expenditure in proportion to the amount due or an estimate thereof.

Interest paid pursuant to Article 3(4) and Article 4(4) shall be deducted by the Member States from expenditure on milk and milk products.’

15 Article 7(1) and (2) of that regulation are worded as follows:

‘1. Member States shall take all the verification measures necessary to ensure payment of the levy on quantities of milk and milk equivalent marketed in excess of any of the quantities referred to in Article 3 of Regulation (EEC) No 3950/92. To that end:

(a) all purchasers operating in the territory of a Member State must be approved by that Member State.

...

(b) producers shall be required to ensure that purchasers to whom they deliver are approved;

- (c) purchasers shall keep available to the competent authority of the Member State for at least three years stock accounts per 12-month period with details of the name and address of each producer, the reference quantity available at the beginning and at the end of each period, the quantities of milk or milk equivalent which he has delivered per month or four-week period, the representative and average fat contents of his deliveries, together with the commercial documents, correspondence and other information referred to in Council Regulation (EEC) No 4045/89... permitting such stock accounts to be verified;
  
- (d) purchasers shall be responsible for recording under the additional levy arrangements all quantities of milk and/or other milk products delivered to them; to that end they shall keep available to the competent authority for at least three years the list of purchasers and undertakings treating or processing milk and/or other milk products supplying them with milk or other milk products and, per month, the quantities delivered by each supplier;
  
- (e) on collection at holdings, milk and/or other milk products shall be accompanied by a document identifying the delivery. In addition, purchasers shall keep records of each individual delivery for at least three years;

...

2. The Member States shall take any further measures necessary to:

...

- ensure that the parties concerned are aware of the penal or administrative sanctions to which they are liable where they fail to comply with the provisions of Regulation (EEC) No 3950/92 and this Regulation.’

*The national legislation*

- 16 The relevant national legal provisions are the Dairy Produce Quota Regulations 1997 (SI 1997 No 733, ‘the DPQR 1997’).

- 17 Regulation 2(1) of the DPQR 1997 provides that:

‘In these regulations, unless the context otherwise requires... “purchaser” means a purchaser as defined in Article 9(e) of... Council Regulation [No 3950/92] and approved by the Intervention Board pursuant to Article 7(1)(a) of... Commission Regulation [No 536/93].’

- 18 Regulation 20 provides:

‘(2) Where any amount of the levy remains unpaid after 1 September in any year, the Intervention Board may recover from the direct seller or (as the case may be) the purchaser, the amount of the levy outstanding at that date together with interest in respect of each day thereafter until the said amount is recovered at the rate of one percentage point above the sterling three-month London interbank offered rate [LIBOR].’

(3) For the purposes of the third subparagraph of Article 2(2) of... Council Regulation [No 3950/92] (which deals with deduction of levy liability), where a producer making wholesale deliveries to a purchaser exceeds his wholesale quota, following adjustment of that quota where appropriate and in accordance with Article 2(2) of Commission Regulation [No 536/93], that purchaser may immediately deduct an amount corresponding to the amount of levy potentially payable by him in respect of the excess from the sums owed to the producer in respect of the deliveries.’

### The main proceedings and the question referred to the Court

19 Penycoed is a farming partnership which, inter alia, raises dairy cows but does not hold any milk quotas. It entered into arrangements with Mr Hugh Phillips, who proceeded to operate the following scheme, initially through Elm Farms Limited (Elm Farms), a company registered under English law, and, from 1 January 1998, TDM Dairy Management Incorporated (TDM), a company registered under the law of the State of Delaware (United States), which acquired control of Elm Farms’s business following the liquidation of that company for non-payment of levies. Penycoed rented part of its land and its cattle initially to Elm Farms and, later, to TDM and those companies entered into a number of agreements under which Penycoed was paid to maintain and milk the herd on behalf of Elm Farms and TDM.

20 The purpose of that arrangement was to enable Penycoed to undertake its dairy activities without having to hold milk quotas. Under Regulations Nos 3950/92 and 536/93, Penycoed was not a producer within the meaning of the DPQR 1997, and Elm Farms and TDM were not purchasers but producers, and would either have to obtain a quota or be liable for any levy incurred.

- 21 The Board condemned that mechanism, taking the view that Penycoed was the producer, that Elm Farms and TDM were purchasers and that there had been supplies of milk by Penycoed to both. Penycoed had thus produced milk without possessing the requisite quota.
- 22 In January 1999, the Board commenced proceedings to compel Penycoed to pay it GBP 561 872.44, representing the levy due for the 2.11 million litres of milk which it had delivered in the course of the 1997/1998 marketing year.
- 23 Penycoed objected that the Board's action was inadmissible on the ground that, even if the facts alleged were true, the Board had no direct claim against it. According to Penycoed, the Board's only claim was against the purchasers of the milk, who would then claim against Penycoed.
- 24 For the purposes of its objection of inadmissibility, Penycoed asks the Court to assume that the Board's analysis is correct. The parties to the main proceedings agree that it would follow that Penycoed was a producer within the meaning of Regulations Nos 3950/92 and 536/93, that Elm Farms and TDM were purchasers to whom deliveries of milk were made by Penycoed for the purposes of Regulation No 3950/92 and, at least, for the purposes of Article 7 of Regulation No 536/93, and that the Board had not approved Elm Farms and TDM as purchasers pursuant to that article.
- 25 It was in those circumstances that the Court of Appeal (England and Wales) (Civil Division) stayed proceedings and referred the following questions to the Court for a preliminary ruling:

- ‘1. Do Articles 1 and/or 2 of Council Regulation No 3950/92 permit the competent body in a Member State to take legal action directly against a producer to recover levy due from that producer (otherwise than pursuant to Article 2(3) in respect of direct sales)?
  
2. If so, in what circumstances may such action be taken?
  
3. In particular, may such action be taken where the purchaser to whom milk was delivered was (a) not approved pursuant to Article 7 of Commission Regulation No 536/93 and/or (b) has not complied with any of its obligations under Article 7 of that Regulation and/or (c) has not recovered or sought to recover levy from the producers concerned?’

### The questions submitted

- 26 By those questions, which it is appropriate to examine together, the national court asks whether and, if so, under what conditions, Articles 1 and/or 2 of Regulation No 3950/92 authorise the competent body of a Member State to take action directly against a milk producer to recover the additional levy payable on the milk by the latter.
- 27 At the outset, it is appropriate to say something about the mechanism for collecting the additional levy on milk introduced by Regulation No 3950/92.

- 28 The additional milk levy scheme is based on a distinction between reference quantities for milk sold directly for consumption and those for milk delivered to purchasers (see, to that effect, Case C-288/97 *Consortio Caseifici dell'Altopiano di Asiago* [1999] ECR I-2575, paragraph 18).
- 29 In the case of direct sales, the producer pays the levy due to the competent body of the Member State in accordance with Article 2(3) of Regulation No 3950/92. As regards deliveries, the purchaser liable for the levy pays to that body the amount due, which he deducts from the price of milk paid to producers who owe the levy or, failing this, collects by any appropriate means, as indicated in Article 2(2) of Regulation No 3950/92. In both cases, the levy is thus payable by the producers.
- 30 In the case of deliveries, the additional levy scheme, as established by Regulations Nos 3950/92 and 536/93, is not, however, designed to govern the relationship existing between the person liable and the debtor or that between the person liable and the competent body to which those sums should be paid.
- 31 Article 2 of Regulation No 3950/92 cannot therefore serve as a legal basis for the competent body of a Member State to act directly, except in the case of direct sales, against a producer in order to recover the levy payable by him.
- 32 The fact that the purchaser does not fulfil, or no longer fulfils, his function as the person liable likewise does not allow the producer to be substituted for the purchaser for the benefit of the competent body. Such a penalty would presuppose the prior existence of a legal basis defining its conditions and scope (see, to that effect, Case C-352/92 *Milchwerke Köln v Wuppertal* [1994] ECR I-3385, paragraph 22, and Case C-277/98 *France v Commission* [2001] ECR I-8453, paragraph 37). However, there is no such legal basis in this case.

- 33 It follows from the foregoing considerations that Regulation No 3950/92 does not provide the competent authority with any legal basis for collecting the additional levy on milk direct from the producer.
- 34 However, that scheme cannot be regarded as exhaustive in the sense that it precludes any other method of recovery in a case where a purchaser has not fulfilled his obligations. In that connection, the eighth recital in the preamble to Regulation No 3950/92 states that the purchaser is the person liable for the levy because he is in the best position to carry out the necessary operations. To the extent to which that assumption proves incorrect, in particular where the purchaser does not comply with his obligation to effect collection, direct recovery by the competent authority from the producer cannot be excluded.
- 35 As is clear from the sixth recital in the preamble to Regulation No 3950/92, it is incumbent solely on the producer who has contributed to the overrun of the quota to pay the levy.
- 36 Where a Community regulation does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 10 EC requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law (Case 68/88 *Commission v Greece* [1989] ECR 2965, paragraph 23; Case C-326/88 *Hansen* [1990] ECR I-2911, paragraph 17; *Milchwerke Köln v Wuppertal*, cited above, paragraph 23; Case C-36/94 *Siesse* [1995] ECR I-3573, paragraph 20; Case C-177/95 *Ebony Maritime and Loten Navigation* [1997] ECR I-1111, paragraph 35, and Case C-167/01 *Inspire Art* [2003] ECR I-10155, paragraph 62).

- 37 The obligation based on Article 10 EC also extends to the initiation of any proceedings under administrative, fiscal or civil law for the collection or recovery of duties or levies which have been fraudulently evaded or for damages (*Milchwerke Köln v Wuppertal*, paragraph 23).
- 38 Accordingly, the Member States are required to take measures to ensure collection of the levy in any cases where the mechanism provided for in Article 2(2) of Regulation No 3950/92 has been frustrated.
- 39 That obligation entails the power to take action directly against the producer in order to recover the amount payable by the latter in respect of the additional levy on milk where it is established that the producer did not pay it to the purchaser and the latter is not taking due steps to collect it from the producer.
- 40 On the other hand, non-compliance with the conditions laid down in Article 7 of Regulation No 536/93, and in particular the lack of approval as purchaser, is not in itself relevant because the payment to the competent body of the amount due in respect of the additional levy is not necessarily adversely affected by such non-compliance. Notwithstanding such failings, the main purpose of the levy scheme, namely the penalisation of overproduction, can be achieved.
- 41 It follows from the foregoing considerations that the answer to the questions submitted must be that Articles 1 and 2 of Regulation No 3950/92 do not authorise the competent body to act directly, in cases other than that of direct sales, against a producer to recover the amount owed by him in respect of the additional levy on milk. However, the Member States' obligation under Article 10 EC to take measures to ensure collection of the levy in the event of the mechanism provided for in Article 2(2) of that regulation being frustrated includes the power to take direct action against the producer with a view to recovering the amount

payable where it is established that the producer has not paid it to the purchaser and that the purchaser is not taking due steps to collect it from the producer. On the other hand, non-compliance with the conditions laid down in Article 7 of Regulation No 536/93, and in particular the absence of approval as purchaser, is not in itself relevant.

## Costs

- 42 The costs incurred by the United Kingdom, Greek and Italian Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Court of Appeal (England and Wales) (Civil Division) by order of 31 May 1991, hereby rules:

1. Articles 1 and 2 of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector do

not authorise the competent body to act directly, in cases other than that of direct sales, against a producer to recover the amount owed by him in respect of the additional levy on milk. However, the Member States' obligation under Article 10 EC to take measures to ensure collection of the levy in the event of the mechanism provided for in Article 2(2) of that regulation being frustrated includes the power to take direct action against the producer with a view to recovering the amount payable where it is established that the producer has not paid it to the purchaser and that the purchaser is not taking due steps to collect it from the producer. On the other hand, non-compliance with the conditions laid down in Article 7 of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products, and in particular the absence of approval as purchaser, is not in itself relevant.

Skouris

Puissochet

Schintgen

Macken

Colneric

Delivered in open court in Luxembourg on 15 January 2004.

R. Grass

V. Skouris

Registrar

President